TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1927

No. 275

ECLIPSE MILL COMPANY, PLAINTIFF IN ERROR,

vs.

DEPARTMENT OF LABOR AND INDUSTRIES OF THE STATE OF WASHINGTON AND CLAIRE BOWMAN, AS DIRECTOR OF LABOR AND INDUSTRIES

IN ERROR TO THE SUPREME COURT OF THE STATE OF WASHINGTON

FILED MAY 31, 1927

(32,727)

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., AUGUST 29, 1927

[fol. 1]

IN SUPERIOR COURT OF THURSTON COUNTY

No. 10863

ECLIPSE MILL COMPANY, a Corporation, Plaintiff,

vs.

DEPARTMENT OF LABOR & INDUSTRIES OF THE STATE OF WASHINGTON and Claire Bowman, as Director of Labor & Industries of the State of Washington, Defendants

AMENDED COMPLAINT—Filed June 25, 1926

For cause of action against defendants, plaintiff alleges:

I

That plaintiff is now and at all times hereinafter mentioned was a corporation organized and existing under and by virtue of the laws of the State of Washington, with its principal place of business located in the City of Everett, Snohomish County, State of Washington. That plaintiff has paid to the State of Washington all its license fees.

II

That the plaintiff brings this, its bill of complaint, in its own behalf, and in behalf of all other persons, firms and corporations, similarly situated, of which there are a large number operating in the State of Washington.

[fol. 2]

III

That the business of the plaintiff corporation is now, and continuously for a number of years last past, has been operating a sawmill for the manufacture of logs into lumber, which mill is located on the Snohomish River, a navigable body of water of the United States, flowing through Snohomish County, into the waters of Puget Sound, and at all times hereinafter mentioned said Snohomish River was a body of navigable water upon and over which, with its connections, commerce by water was, and now is, being car-

ried on between points in the State of Washington and other points of the United States and foreign countries.

IV

That the logs which are cut into lumber at plaintiff's said mill are towed thereto in booms, upon the waters of said Snohomish River, which booms are *are* anchored at said mill while in the navigable waters of said Snohomish River, and logs from such booms are moved therefrom to said mill for cutting, by means of a conveyor operated by a spike endless chain, operating throughout the length of said conveyor — extends into the navigable waters of said Snohomish River. That to transfer logs from said booms to said conveyor, plaintiff hires and for a number of years last past has hired employees, called boom men, whose duties continuously require them to be upon such rafts of logs while on the navigable waters of the Snohomish River for the purpose of breaking up such rafts, and also employees, [fol. 3] called slip men, whose duties likewise continuously require and have required them to be upon such navigable waters of Snohomish River, for the purpose of guiding such logs from such rafts to the said conveyor. That said rafts or booms of logs are made up by using a number of logs which are permenently chained together and permanently used for the holding — the logs together, and that the men in working upon these booms frequently use and are required to use these permanent boom sticks to stand on.

V

That the Department of Labor & Industries of the State of Washington, acting through the defendant, Claire Bowman, as Director of the Department of Labor and Industries, has made and promulgated a rule and order that such boom men and such raft men are within the terms of the Workmen's Compensation Act of the State of Washington, and that the plaintiff and all other similar employers, will be required to include the wages paid to such boom men and raft men within the payroll which they are required to report to the Director of Labor & Industries, and to pay premiums upon the whole of such payroll so formed and reported, and the Director of Labor & In-

dustries has demanded that plaintiff so include such men in the payroll to be reported by it and to pay premiums on the whole of such payroll so formed.

[fol. 4]

VI

That said rule and order so promulgated, and said demand so made as aforesaid, is in violation of and contrary to the terms of the Workmen's Compensation Act*ion* of the State of Washington, and is in violation of Article III, Section 2 of the Constitution of the United States extending the judicial power of the United States to all cases of admiralty and maritime jurisdiction, and of Article I, Section 8 of the Constitution of the United States giving Congress power to make all laws necessary and prope*r*ty to carry into execution the powers vested in the Government of the United States, and is in violation of the judicial code of the United States, and of Sections 24 and 256, giving the Federal District Courts the exclusive original cognizance of all civil causes of admiralty and maritime jurisdiction, and plaintiff hereby invokes said provisions of the Constitution of the United States and said sections of the Judicial Code of the United States, and alleges that said rule and order, and said demand, cannot be enforced against this plaintiff consistent therewith.

VII

That if the plaintiff does not comply with said order and rule so promulgated as aforesaid, and if it does not include such boom and slip men in the payroll which it will report to the Department of Labor & Industries, and if it does not pay premiums upon the payroll so formed, the Director of Labor & Industries will invoke all of the penalties of the Workmen's Compensation Act against the [fol. 5] plaintiff, and will, in so far as power is given to him, prevent this plaintiff from carrying on its business as aforesaid; that there are many other employers of labor in the State of Washington, similarly situated in all respects as is the plaintiff, against whom the same rule and the same remedies and penalties will be enforced by the Director of Labor & Industries, and a multiplicity of suits will be begun and carried on thereby. That the plaintiff has no adequate remedy at law but is relievable only in a court of equity.

Wherefore, plaintiff prays judgment as follows:

1. That an order to show cause issued herein to the defendants above named directed, ordering and directing them to show cause at a time and place to be fixed by this court, if any they have, why a temporary injunction should not be entered herein, enjoining and restraining them, and each of them, until the entry of the final decree herein, from enforcing or attempting to enforce the order and rule hereinabove set forth, and from requiring the plaintiff, and all others similarly situated, to include in the respective payrolls to be submitted by them to the Director of Labor & Industries, all boom men and raft men working upon navigable waters of the United States, and from requiring the plaintiff, and other employers similarly situated, to pay premiums upon the payrolls so formed, and from in any wise interfering with the conduct of the busi- [fol. 6] ness of the plaintiff, and all other employers similarly situated, by reason of their failure so to include such boom men and raft men in such payrolls, and paying premiums upon the payrolls so formed.

2. That upon the final hearing herein, a perpetual injunction, so enjoining the defendants above named be entered herein.

3. That the plaintiff have such other and further relief as to the court may seem just and equitable, together with its costs and disbursements herein to be taxed.

Guie & Halverstadt, Attorneys for Plaintiff.

[fol. 7] *Duly sworn to by Harry W. Stuchell. Jurat omitted in printing.*

[File endorsement omitted.]

[fol. 8] In Superior Court of Thurston County

[Title omitted]

Demurrer to Amended Complaint—Filed June 25, 1926

Come now the defendants herein, and demur to the Amended Complaint of the Plaintiff herein on the following grounds:

1

That the Amended Complaint does not state facts sufficient to constitute a cause of action.

John H. Dunbar, Attorney General; M. H. Wight, Assistant Attorney General, Attorneys for Defendant.

[File endorsement omitted.]

[fol. 9] In Superior Court Thurston County

[Title omitted]

Order Sustaining Demurrer and Judgment—Filed July 6, 1926

This matter having come on regularly for hearing on the 25th day of June, 1926, before Honorable John M. Wilson, one of the Judges of the above named Court upon the demurrer of the defendant, the plaintiff being represented by Guie & Halverstadt, and the defendant being represented by M. H. Wight, Assistant Attorney General, of the State of Washington, and the Court having listened to the arguments of counsel and having thereafter taken the matter under advisement and having thereafter prepared and filed a written memo opinion, and being fully advised in the premises both as to the law and facts, it is hereby

Ordered that the demurrer be and the same is hereby sustained.

The plaintiff having elected to stand on its complaint, and having refused to plead further, it is further

[fols. 10-24] Ordered, adjudged and decreed that the above entitled action be and the same is hereby dismissed with costs in favor of the defendant.

The plaintiff excepts to the order sustaining the demurrer and to the judgment, which exceptions are hereby allowed.

Done in open court this 6th day of July, 1926.

John M. Wilson, Judge.

The foregoing order and judgment is hereby O. K'd as to form and plaintiff hereby waives any notice of the presentation for signing and entry, and the signing and entry of said judgment; and hereby admits that it elects to stand on its amended complaint herein, and refuses to plead further.

Dated this 3rd day of July, 1926.

D. V. Halverstadt, Jno. J. O'Brien, Attorneys for Plaintiff.

[File endorsement omitted.]

[fol. 25] In Supreme Court of Washington, Department One

No. 20214

Eclipse Mill Company, a Corporation, Appellant,

v.

Department of Labor & Industries of the State of Washington and Claire Bowman, as Director of Labor and Industries of the State of Washington, Respondents

No. 20215

Sultan Railway & Timber Company, a Corporation, Appellant,

v.

Department of Labor & Industries of the State of Washington and Claire Bowman, as Director of Labor and Industries of the State of Washington, Respondents

Opinion—Filed Dec. 3, 1926

These are separate appeals, consolidated by an order of this court for the purpose of hearing. Each of the appellants employs workmen who work in extra hazardous occupations as that term is defined in the state workmen's compensation act. Certain of these workmen the appellants did not list on their payrolls furnished the department of labor and industries whose duty it is to enforce the

provisions of the act mentioned. The department ordered them so to do, and threatened them with the penalties of the act in the case they refused to comply with the order. Actions were then begun by each of the appellants separately in the superior court of Thurston county seeking to enjoin the department from enforcing the order. To the [fol. 26] complaints of the appellants, general demurrers were interposed which the trial court sustained. The appeals are from judgments of dismissal entered after the appellants had elected to stand on their complaints.

There is no contention that the occupations in which the workmen were engaged are not extra hazardous; the controversy is over the question whether the occupations are within the provisions of the workmen's compensation act.

As the causes were determined in the court below on general demurrers, the facts must be gathered from the allegations of the complaint. With reference to the character of the work in which the workmen of the appellant, Sultan Railway & Timber Company, were engaged, the pertinent allegations are as follows:

"III. That for a number of years last past plaintiff has been and now is the owner of a large body of timber in the state of Washington, and cutting said timber and selling the logs therefrom. That during said time it has been engaged in dumping such logs so produced in the Snohomish River, which at all of said times was and now is a navigable body of water of the United States, flowing through Snohomish County, into the waters of Puget Sound, and at all times hereinafter mentioned said Snohomish River was a body of navigable water upon and over which, with its connections commerce by water was, and now is, being carried on between points in the state of Washington and other points of the United States, and foreign countries. That such logs have been and now are so dumped into the waters of Snohomish River for the purpose of booming, sorting, and rafting the same while so located in the said Snohomish River preparatory to causing the same to be towed over the waters of such Snohomish River and other navigable waters of the United States to the mills of the purchasers thereof, that for the purpose of booming and rafting such logs, while so located in the water of said Snohomish River, plaintiff hires and for a number of years last past has hired

employees whose duties continually require them to be upon such logs and on the navigable waters of said Snohomish River for the purpose of making such logs into rafts preparatory to causing them to be towed over such navigable waters of the United States to the purchasers thereof. That said rafts or booms of logs are made up by using a number of logs which are permanently chained together and permanently used for holding the logs together, and that the men in working upon these booms frequently use and are required to use these permanent boom sticks to stand on."

With reference to the character of the work in which the workmen of the appellant, Eclipse Mill Company, were engaged, the allegations are as follows:

[fol. 27]

"III. That the business of the plaintiff corporation is now, and continuously for a number of years last past, has been operating a sawmill for the manufacture of logs into lumber which mill is located on the Snohomish River, a navigable body of water of the United States, flowing through Snohomish County into the waters of Puget Sound and at all times hereinafter mentioned said Snohomish River was a body of navigable water upon and over which with its connections, commerce by water was, and now is being carried on between the points in the State of Washington and other points of the United States, and foreign countries.

"IV. That the logs which are cut into lumber at plaintiff's said mill are towed thereto in booms, upon the waters of said Snohomish River, which booms are anchored at said mill while in the navigable waters of said Snohomish River; and logs from such booms are moved therefrom to said mill for cutting, by means of a conveyor operated by a spike endless chain, operating throughout the length of said conveyor. That the lower end of said conveyor extends in to the navigable waters of said Snohomish River. That to transfer logs from said booms to said conveyor plaintiff hires and for a number of years last past has hired employees, called boom men, whose duties continuously require them to be upon such rafts of logs while on the navigable waters of the Snohomish River for the purpose of breaking up such rafts, and also employees, called slip

men, whose duties likewise continuously require and have required them to be upon such navigable water of the Snohomish River, for the purpose of guiding such logs from such rafts to the said conveyor. That said rafts or booms of logs are made up by using a number of logs which are permanently chained together, and that the men in working upon these booms frequently use and are required to use these permanent boom sticks to stand on."

From these allegations it will be seen that, while the workmen of each of the appellants work upon navigable waters, they do not actually engage in the work of navigation; that is to say, either set of workmen transports the logs from one place on such navigable waters to another. The work of the first set is to prepare the logs for transportation; their work ends at the point where actual transportation begins. The work of the second set begins at the point where transportation ends; their work is to break up the rafts after the rafts have reached their destination, and float the logs singly or in groups to the reach of the conveyor by means of which the logs are taken from the navigable waters into appellant's mill.

Turning to our workmen's compensation act, it is at once [fol. 28] plain that the legislature intended it to apply to all cases of employment, where the work is extra hazardous, which are within the legislative jurisdiction of the state. The act expressly so declares, and among the employments specially enumerated in the act as coming within its provisions are "logging" and "lumbering." The work in which these workmen are engaged manifestly falls within these terms as they are commonly and generally understood. It must follow, therefore, that if the work is within the legislative jurisdiction of the state the workmen are within the terms of the act, and their employers are bound to contribute to the fund from which injuries occurring to the workmen in the prosecution of the work are compensated. But it is equally plain that if the work is not within the legislative jurisdiction of the state, the act is without application, and their employers are not bound to so contribute. The state legislature cannot "impose upon an employer any obligation to contribute to a fund to pay awards under the workmen's compensation law, unless it affords protection to the employer as against claims of workmen or their dependents payable out of the fund to which the

employer is compelled to contribute." Zahler v. Dept. of Labor and Industries, 125 Wash. 410, 217 Pac. 55.

The controlling question therefore is, is the work in which these workmen are engaged within the legislative jurisdiction of the state. The question is one we have not found easy of solution. Nor is it one upon which we can pronounce a determinative judgment. It involves the law maritime, over which the highest federal court has plenary and final jurisdiction, and it is to the decisions of that court that we must look for the governing rules. The decisions, we shall not analyze. Generally, it can be said that it is the settled doctrine of that court that any work per [fol. 29] formed by workmen upon navigable waters, no matter what may be its character, is essentially maritime in its nature, and controlled by the principles of admiralty. A further settled rule is that in contract matters admiralty jurisdiction depends upon the nature of the transaction, and in tort matters upon locality.

Southern Pacific Co. v. Jensen, 224 U. S. 205;
Clyde Steamship Co. v. Walker, 244 U. S. 255;
Chelentis v. Luckenbach Steamship Co., 247 U. S. 372;
Knickerbocker Ice Co. v. Stewart, 253 U. S. 149;
Western Fuel Co. v. Garcia, 257 U. S. 233;
Gonsalves v. Morse Dry Dock Co., 266 U. S. 171.

The general rules here announced would seem to control the question against the contention that the work of the workmen here involved is within the legislative jurisdiction of the state, but the court cited has announced an exception to these general rules which materially affects their application. It has held that, where the employment, although maritime in its character, pertains to local matters, having no direct relation to navigation and commerce, the maritime law "might be modified or supplemented" by state statutes since the regulation would "work no material prejudice to any characteristic feature of the general maritime law, or interfere with the harmony or uniformity of that law in its international or interstate relations." In Western Fuel Co. v. Garcia, 257 U. S. 233, the exception was applied to a state death statute. In that case it ap-

peared that a citizen and resident of California was instantly killed while employed in the hold of a Norwegian vessel. An admiralty suit in personam was instituted against his employer for damages, in which it was charged that the death was the result of the negligence of the em-[fol. 30] ployer. There was a state statute giving a right of action for death by wrongful act, and because of this statute a recovery was allowed in the United States district court in which the action was instituted. The cause was appealed to the Circuit Court of Appeals, from which court it was sent to the Supreme Court by the direction of the latter court. The case was reversed because the district court refused to hold that the suit was barred by the statute of limitations, but, concerning the right to maintain the suit, this language was used:

"It is established doctrine that no suit to recover damages for the death of a human being caused by negligence, may be maintained in the admiralty courts of the United States under the general maritime law. At the common law no civil action lies for an injury resulting from death. The maritime law as generally accepted by maritime nations leaves the matter untouched and in practice each of them has applied the same rule for the sea which it maintains on land. The Harrisburg, 119 U. S. 204, 213; The Alaska, 150 U. S. 201, 209; La Bourgogne, 210 U. S. 95, 138, 139.

"How far this rule of non-liability adopted and enforced by our admiralty courts in the absence of an applicable statute may be modified, changed or supplemented by state legislation has been the subject of consideration here but no complete solution of the question has been announced.

"As the logical result of prior decisions we think it follows that, where death upon such waters results from a maritime tort committed on navigable waters within a State whose statutes give a right of action on account of death by wrongful act, the admiralty courts will entertain a libel in personam for the damages sustained by those to whom such right is given. The subject is maritime and local in character and the specified modification of or supplement to the rule applied in admiralty courts, when following the common law, will not work material prejudice to the characteristic features of the general maritime law, nor inter-

fere with the proper harmony and uniformity of that law in its international and interstate relations. Southern Pacific Co. v. Jensen, 244 U. S. 205."

In Grant Smith Porter Co. v. Rohde, 257 U. S. 469, the principle was applied to a workman on an incompleted vessel, after the vessel had been launched and was in navigable waters. The workman was injured because of the negligence of his employer, and instituted a libel in personam against his employer for damages. The injury occurred in the state of Oregon, which state had workmen's compensation law applicable to hazardous occupations, with [fol. 31] which the employer had complied by paying into the accident fund created by the law the specified payments, which included deductions made from the wages of the workmen. Two questions were submitted to the supreme court, first, whether the admiralty jurisdiction extended to a proceeding to recover damages resulting from a tort committed on a vessel in process of construction when lying within the navigable waters within a state, and, second, "whether under the circumstances stated the exclusive features of the Oregon workmen's compensation act would apply and abrogate the right to recover damages in an admiralty court which otherwise would exist." The court answered both questions affirmatively. Stating with reference to the latter, that: "Here the parties contracted with reference to the state statute; their rights and liabilities had no direct relation to navigation, and the application of the local law cannot materially affect any rules of the sea whose uniformity is essential." It might be thought that because the parties had contracted with reference to the state statute it had a controlling influence in the mind of the court, but the court, in subsequent decisions, restated the ground of its conclusion, resting it upon the sole ground that the application of the state law would work no material prejudice to the characteristic features of the general maritime law. See, Ct. Lakes Co. v. Kierejewski, 261 U. S. 479; Millers' Indemnity Underwriters v. Braud, — U. S. —, (8 Advance Opinions 211). The latter case is instructive also on the question now under consideration. In that case the workman was, while employed as a diver, submerged from a floating barge, anchored in a navigable

stream some thirty-five feet from the bank of the stream, for the purpose of sawing off timbers from an abandoned set of ways which had become an obstruction to navigation. [fol. 32] While thus submerged the air supply failed and he died of suffocation. The courts of Texas affirmed an award made under the workmen's compensation law of that state, and the case was taken to the supreme court of the United States on writ of error where the judgment of the Texas court was affirmed. In its decision, the Supreme Court, after pointing out that matters which are not of mere local concern because of their relation to commerce and navigation, are beyond the regulatory powers of the state, again affirmed the rule that as to local matters which will work no material prejudice to the general maritime law, the rules of the latter may be modified or supplemented by state statutes. In the course of the opinion this language was used:

"In the cause now under consideration the record discloses facts sufficient to show a maritime tort to which the general admiralty jurisdiction would extend save for the provisions of the state Compensation Act; but the matter is of mere local concern and its regulation by the state will work no material prejudice to any characteristic feature of the general maritime law. The act prescribes the only remedy; its exclusive features abrogate the right to resort to the admiralty court which otherwise would exist."

The workmen's compensation acts the court had under consideration in these cases are no more exclusive than our own. Indeed, if there be a difference in this respect, ours is the more exclusive. Not only is it compulsory rather than elective, but by express declaration it withdraws from private controversy and from the jurisdiction of the courts all controversies arising over the right to compensation for personal injuries received by a workman in an extra hazardous occupation. Its exclusive features are further exemplified by the fact that it expressly declares that it is intended to apply "to all such inherently hazardous works and occupations, and it is its purpose to embrace all of them, which are within the legislative jurisdiction of the [fol. 33] state" (Rem. Comp. Stat. 7674).

Measured by the test the authoritative court has laid down, it is our opinion that the workmen here under consideration are within the terms of the workmen's compensation act, and that their employers are liable to contribute to the accident fund as required by the act. Manifestly, it seems to us, that the work in which the workmen are engaged is purely local in its nature, that it has no direct relation to commerce or navigation, and that its regulation by the state will work no material prejudice to any characteristic feature of the general maritime law, nor interfere with the harmony or uniformity of that law in its international or interstate relations. These being the circumstances, in the language of the last of the cited cases, "The act prescribes the only remedy; its exclusive features abrogate the right to resort to the admiralty court which otherwise would exist." And from this it follows that, since the workmen injured in the work may resort to the fund for compensation for their injuries, their employers are obligated to contribute to the fund.

The judgments of the lower court are affirmed.

Fullerton, J.

We concur: Tolman, C. J., Holcomb, J., Main, J., Mitchell, J.

[fol. 34] In Supreme Court of Washington

[Title omitted]

Judgment—January 4, 1927

This cause having been heretofore submitted to the Court, upon the transcript of the record of the Superior Court of Thurston County, and upon the argument of counsel, and the court having fully considered the same, and being fully advised in the premises, it is now, on this 4th day of January, A. D. 1927, on motion of John H. Dunbar and M. H. Wight of counsel for —— considered, adjudged and decreed, that the —— judgment of the said Superior Court be, and the same is, hereby affirmed with costs; and that the said Department of Labor & Industries et al. have

and recover of and from the said Eclipse Mill Co. and from United States Fidelity & Guaranty Co. surety, the costs of this action taxed and allowed at Thirty-Two & 50/100 Dollars, and that execution issue therefor. And it is further ordered, that this cause be remitted to the said Superior Court for further proceedings, in accordance herewith.

[fol. 35] [File endorsement omitted]

IN SUPREME COURT OF WASHINGTON

WRIT OF ERROR—Filed April 4, 1927

UNITED STATES OF AMERICA, ss:

The President of the United States to the Honorable the Justices of the Supreme Court of the State of Washington, Greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the Supreme Court of the State of Washington before you, at the October term, 1926, thereof, being the highest court of law or equity of said state in which a decision could be had in said suit between the plaintiff in error, Eclipse Mill Company, designated as the plaintiff and appellant, and Department of Labor and Industries of the State of Washington, and Claire Bowman, as Director of Labor and Industries, designated as defendants and respondents, wherein rights are claimed under the Constitution of the United States, and the decision was against the rights especially set up and claimed under said Constitution and the acts of the Congress of the United States, a manifest error happened to the great damage of the said Eclipse Mill Company, as by its complaint appears.

We, being willing that error, if any hath been, shall be duly corrected and full and speedy justice done to the party aforesaid in this behalf, do command you, if judgment be therein given, that you under your seal, distinctly and openly, do send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have

the same in the said Supreme Court at Washington, within [fols. 36-38] sixty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what is right, and according to the laws and customs of the United States should be done.

Witness the Honorable William H. Taft, Chief Justice of the Supreme Court of the United States, this 2d day of April, in the year of our Lord, one thousand nine hundred twenty-seven.

Done in the City of Seattle, and County of King, with the seal of the District Court of the United States for the Western District of Washington attached.

Ed. M. Lakin, Clerk of the District Court of the United States for the Western District of Washington, by T. W. Egger, Deputy Clerk U. S. District Court, Western District of Washington. (Seal of the United States District Court, Western District of Washington.)

Allowed by: Kenneth Mackintosh, Chief Justice of the Supreme Court of the State of Washington.

[fol. 39] In Supreme Court of the United States

Statement of Points to be Relied Upon and Designation of Parts of Record to be Printed—Filed June 15, 1927

To the Department of Labor & Industries of the State of Washington and Claire Bowman, as Director of Labor & Industries of the State of Washington, and John H. Dunbar, Attorney General of the State of Washington, and Mark H. Wight, Assistant Attorney General of the State of Washington, attorneys for defendants in error:

You will please take notice that the Plaintiff in Error hereby designates as the points to be relied upon, upon writ of error, the following:

I

The court erred in holding and adjudging that the rule, promulgated by the Department of Labor & Industries of

the State of Washington, and Claire Bowman, as Director of Labor & Industries of the State of Washington, assuming to act pursuant to and in conformity with an act of the State of Washington, entitled:

"An Act relating to the compensation of injured workmen in our industries, and the compensation to their dependents where such injuries result in death, creating an Industrial Insurance Department, making an appropriation for its administration, providing for the creation and disbursement of funds for the compensation and care of workmen injured in hazardous employment, providing penalties for the non-observance of regulations for the prevention of such injuries and for violation of its provisions, asserting and exercising the police power in such cases, and, except in certain specified cases, abolishing the doctrine of negligence as a ground for recovery of damages against employers, and depriving the courts of jurisdiction of such controversies and repealing sections 6594 and 6596 of Remington & Ballinger's Annotated Codes and Statutes of Washington, relating to employees in factories, mills or workshops where machinery is used, sections for the recovery of damages and prescribing a punishment for violation thereof."

approved March 14, 1911, (commonly known as the "Workmen's Compensation Act"), requiring employers of work- [fol. 40] men wholly engaged in breaking up and working upon rafts of logs, while upon the navigable waters of the United States, preparatory to said logs from said raft being sent to a saw mill, situated upon said navigable water of the United States, to be cut into lumber, said rafts being made up and held together by logs, commonly known as boom sticks, permanently chained together, end to end, and permanently used for so holding together and towing said rafts of logs, upon which rafts and boom stocks such workmen are compelled to walk and stand while engaged in their duties, to include in the pay-rolls which employers engaged in extra-hazardous industry, as defined in said Workmen's Compensation Act, are required by the terms of said act, to report to said Department and Director, and to pay assessments, levid by said Department and Director, upon such pay rolls for the purpose of maintaining

the Accident Fund, created by said act for the purpose of compensating workmen engaged in extra-hazardous industry, and their dependents, for injuries sustained by such workmen while so engaged, is not in violation of Article III, Section 2, of the Constitution of the United States, extending the judicial power of the United States to all cases of admiralty and maritime jurisdiction.

II

The court erred in holding and adjudging that said rule is not in violation of Article I, Section 8, of the Constitution of the United States, giving Congress power to make all the laws necessary and proper to carry into execution the powers vested in the Government of the United States.

III

The court erred in holding and adjudging that said rule is not in violation of and contrary to Sections 24, and 256, of the Judicial Code of the United States, giving the Federal District Courts the exclusive original cognizance of all civil causes of admiralty and maritime jurisdiction.

D. V. Halverstadt, Jno. J. O'Brien, Attorneys for Plaintiff in Error. Frederic E. Fuller, of Counsel.

Service and receipt of copy hereof admitted this 8th day of June, 1927.

Mark H. Wight, Asst. Atty. Genl.

[fols. 41 & 42] In Supreme Court of the United States

To Clerk of the Supreme Court of the United States and Department of Labor & Industries of the State of Washington and Claire Bowman, as Director of Labor & Industries of the State of Washington, and to John H. Dunbar, Attorney General of the State of Washington, and Mark H. Wight, Assistant Attorney General of the State of Washington, attorneys for defendants in error:

You will please take notice that the plaintiff in error in the above entitled action hereby designates the following parts of the record to be printed:

1. Amended complaint;
2. Demurrer to amended complaint;
3. Order sustaining demurrer to amended complaint and judgment of dismissal;
4. Order and judgment of Supreme Court of the State of Washington sustaining and affirming order and judgment of dismissal.

D. V. Halverstadt, Jno. J. O'Brien, Attorneys for Plaintiff in Error. Frederic E. Fuller, of Counsel.

Due service of the foregoing Designation and receipt of copy hereby admitted this 8th day of June, 1927.

John H. Dunbar, Atty. Genl.; Mark H. Wight, Asst. Atty. Genl., Attorneys for Defendants in Error.

Endorsed on cover: File No. 32,727. Washington Supreme Court. Term No. 275. Eclipse Mill Company, plaintiff in error, vs. Department of Labor and Industries of the State of Washington and Claire Bowman, as Director of Labor and Industries. Filed May 31st, 1927. File No. 32,727.

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In the Supreme Court of the United States

OCTOBER TERM, 1927

SULTAN RAILWAY & TIMBER COMPANY,
Plaintiff in Error,
vs.
DEPARTMENT OF LABOR & INDUSTRIES OF THE STATE OF WASHINGTON, and CLAIRE BOWMAN, as Director of Labor & Industries,
Defendants in Error.
No. 274

ECLIPSE MILL COMPANY,
Plaintiff in Error,
vs.
DEPARTMENT OF LABOR & INDUSTRIES OF THE STATE OF WASHINGTON, and CLAIRE BOWMAN, as Director of Labor & Industries,
Defendants in Error.
No. 275

WRIT OF ERROR TO THE SUPREME COURT OF THE UNITED STATES

BRIEF OF PLAINTIFFS IN ERROR

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In the Supreme Court of the United States

OCTOBER TERM, 1927

SULTAN RAILWAY & TIMBER COMPANY, *Plaintiff in Error*, vs. DEPARTMENT OF LABOR & INDUSTRIES OF THE STATE OF WASHINGTON, and CLAIRE BOWMAN, as Director of Labor & Industries, *Defendants in Error*.	No. 274
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WRIT OF ERROR TO THE SUPREME COURT OF THE UNITED STATES

BRIEF OF PLAINTIFFS IN ERROR

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In the Supreme Court of the United States

OCTOBER TERM, 1927

SULTAN RAILWAY & TIMBER COMPANY, *Plaintiff in Error,* vs. DEPARTMENT OF LABOR & INDUSTRIES OF THE STATE OF WASHINGTON, and CLAIRE BOWMAN, as Director of Labor & Industries, *Defendants in Error.*	No. 274
ECLIPSE MILL COMPANY, *Plaintiff in Error,* vs. DEPARTMENT OF LABOR & INDUSTRIES OF THE STATE OF WASHINGTON, and CLAIRE BOWMAN, as Director of Labor & Industries, *Defendants in Error.*	No. 275

WRIT OF ERROR TO THE SUPREME COURT OF THE UNITED STATES

BRIEF OF PLAINTIFFS IN ERROR

In view of the fact that these cases were consolidated for hearing by the Supreme Court of the State of Washington, the court of last resort, and that one opinion was rendered in the two consolidated cases and pursuant to stipulation of counsel, but one brief will

be written. The opinion of the court is found in Volume 141 of Washington Reports, page 172, 251 Pac. 130.

The judgments sought to be reviewed here were rendered and entered on the 4th day of January, 1927 (R. 274, p. 3; R. 275, p. 3).

These actions, No. 274 and No. 275, respectively, were commenced to restrain the defendants in error from collecting or attempting to collect premiums under the Workmen's Compensation Act of the State of Washington based on the payroll of men employed in breaking up booms of logs at the mill, and men employed in making up rafts of logs for tow, while on navigable water of the United States, and to enjoin and restrain the defendants-in-error from invoking the penalties provided by the act for non-compliance with the order of the defendants-in-error. The plaintiffs-in-error, in their bills of complaint and in the lower court, urged that the rule and order promulgated by the defendants-in-error for the payment of premiums under the Workmen's Compensation Act was in violation of and contrary to the terms of the Workmen's Compensation Act of the State of Washington, and in violation of Article III, Section 2 of the Constitution of the United States extending the judicial power of the United States to all cases of admiralty and maritime jurisdiction, and of Article

1, Section 8, of the Constitution of the United States, giving Congress power to make all laws necessary and proper to carry into effect the powers vested in the Government of the United States, and in violation of Sections 24, and 256, of the Judicial Code of the United States, giving the Federal District Courts, the exclusive original cognizance of all civil cases of admiralty and maritime jurisdiction.

The Supreme Court of the State ruled against all of these contentions. (R. 274, p. 7; R. 275, p. 6).

These writs of error are taken pursuant to Section 237 of the Judicial Code as amended, which provides for a review by writ of error where the validity of a law, or an authority exercised under any state is drawn in question on the ground of the same being repugnant to the Constitution or laws of the United States, and the validity of such laws or authority is sustained by the highest court in the state in which a decision could be had.

The jurisdiction of this court is sustained by the following cases:

Ex parte Young, 209 U. S. 123;
Pitney v. *State*, 240 U. S. 387;
Truax v. *Raich*, 239 U. S .33;
Adams v. *Tanner*, 244 U. S. 590;
Asakura v. *Seattle*, 265 U. S. 332;
Washington v. *Dawson & Co.*, 264 U. S. 219.

STATEMENT OF THE CASE

These actions were instituted in the Superior Court of the State of Washington for Thurston County to restrain the defendants-in-error from collecting or attempting to collect premiums under the Workmen's Compensation Act of the State of Washington, based upon the payroll of men employed in breaking up booms at the mill and employed in making up rafts of logs for tow while on navigable water of the United States and to enjoin and restrain the defendants-in-error from invoking the penalties provided by the act for non-compliance with an order of defendants-in-error.

The court sustained a demurrer to the amended complaints in each case on the ground of insufficient facts and, the plaintiffs-in-error refusing to plead further, judgment of dismissal was entered. For convenience of the court, we copy Paragraphs III, IV, V and VI of the Sultan Railway & Timber Company's amended complaint, Cause No. 274, which are as follows:

III.

"That for a number of years last past plaintiff has been and now is the owner of a large body of timber in the State of Washington, and cutting said timber and selling the logs therefrom. That during said time it has been engaged in dumping

such logs so produced in the Snohomish River, which at all of said times was and now is a navigable body of water of the United States, flowing through Snohomish County, into the waters of Puget Sound, and at all times hereinafter mentioned said Snohomish River was a body of navigable water upon and over which, with its connections, commerce by water was, and now is, being carried on between points in the State of Washington and other points of the United States, and foreign countries. That such logs have been and now are so dumped into the waters of Snohomish River for the purpose of booming, sorting, and rafting the same while so located in the said Snohomish River, preparatory to causing the same to be towed over the waters of such Snohomish River and other navigable waters of the United States to the mills of the purchasers thereof, that for the purpose of booming and rafting such logs, while so located in the water of said Snohomish River, plaintiff hires and for a number of years last past has hired employees whose duties continually require them to be upon such logs and on the navigable waters of said Snohomish River for the purpose of making such logs into rafts preparatory to causing them to be towed over such navigable waters of the United States to the purchasers thereof. That said rafts or booms of logs are made up by using a number of logs which are permanently used for holding the logs together, and that the

men in working upon these booms frequently use and are required to use these permanent boom sticks to stand on.

IV.

"That the Department of Labor and Industries of the State of Washington, acting through the defendant, Claire Bowman, as Director of the Department of Labor and Industries, has made and promulgated a rule and order that such men while in the employ of the plaintiff, and while working upon the waters of the Snohomish River, as aforesaid, and all other employers similarly situated, will be required to include the wages paid to such employees within the payroll which they are required to report to the Director of Labor and Industries, and to pay premiums on the whole of such payroll so formed and reported, and the Director of Labor and Industries has demanded that plaintiff so include such men in the payroll to be reported by it and to pay premiums upon the whole of such payroll so formed, acting and claiming to act under and by virtue of the provisions of the Workmen's Compensation Act of the State of Washington.

V.

"That said rule and order so promulgated, and said demand so made as aforesaid, is in violation of and contrary to the terms of the Workmen's Compensation Act of the State of Washington,

and is in violation of Article III, Section 2, of the Constitution of the United States extending the judicial power of the United States to all cases of admiralty and maritime jurisdiction, and of Article I, Section 8 of the Constitution of the United States giving Congress power to make all laws necessary and proper to carry into execution the powers vested in the Government of the United States, and is in violation of Sections 24 and 256 of the Judicial Code of the United States, giving the Federal District Courts the exclusive original cognizance of all civil causes of admiralty and maritime jurisdiction, and plaintiff hereby invokes said provisions of the Constitution of the United States, and said sections of the Judicial Code of the United States, and alleges that said rule and order, and said demand, cannot be enforced against this plaintiff consistent therewith.

VI.

"That if the plaintiff does not comply with said order and rule so promulgated as aforesaid, and if it does not include such men so working upon the navigable waters of the Snohomish River are aforesaid in the payroll which it will report to the Department of Labor and Industries, and to the Director thereof, and if it does not pay premiums upon the payroll so formed, the Director of Labor and Indutsries will invoke all of the penalties of the Workmen's Compensation Act against the plaintiff, and will, in so far as power

is given to him, prevent this plaintiff from carrying on its business as aforesaid; that there are many other employers of labor in the State of Washington, similarly situated in all respects as is the plaintiff, against whom the rule and the same remedies and penalties will be enforced by the Director of Labor and Industries, and a multiplicity of suits will be begun and carried on thereby. That the plaintiff has no adequate remedy at law, but is relievable only in a court of equity."

Likewise, for the convenience of the court, we copy Paragraphs III, IV, V, VI and VII of the Eclipse Mill Company's case, case No. 275, which are as follows:

III.

"That the business of the plaintiff corporation is now, and continuously for a number of years last past, has been operating a sawmill for the manufacture of logs into lumber, which mill is located on the Snohomish River, a navigable body of water of the United States, flowing through Snohomish County into the waters of Puget Sound; and at all times hereinafter mentioned said Snohomish River was a body of navigable water upon and over which, with its connections, commerce by water was, and now is, being carried on between points in the State of Washington and other points of the United States, and foreign countries.

IV.

"That the logs which are cut into lumber at plaintiff's said mill are towed thereto in booms, upon the waters of said Snohomish River, which booms are anchored at said mill while in the navigable waters of said Snohomish River; and logs from such booms are moved therefrom to said mill for cutting, by means of a conveyor operated by a spike endless chain, operating throughout the length of said conveyor. That the lower end of said conveyor extends into the navigable waters of said Snohomish River. That to transfer logs from said booms to said conveyor, plaintiff hires and for a number of years last past has hired employees, called boom men, whose duties continuously require them to be upon such rafts of logs on the navigable waters of the Snohomish River for the purpose of breaking up such rafts, and also employees, called slip men, whose duties likewise continuously require and have required them to be upon such navigable waters of the Snohomish River, for the purpose of guiding such logs from such rafts to the said conveyor. That said rafts or booms of logs are made up by using a number of logs, which are permanently chained together, and that the men in working upon these booms frequently use and are required to use these permanent boom stocks to stand on.

V.

"That the Department of Labor and Industries of the State of Washington, acting through the defendant, Claire Bowman, as Director of the Department of Labor and Industries, has made and promulgated a rule and order that such boom men and such raft men are within the terms of the Workmen's Compensation Act of the State of Washington, and that the plaintiff and all other similar employers, will be required to include the wages paid to such boom men and raft men within the payroll which they are required to report to the Director of Labor and Industries, and to pay premiums upon the whole of such payroll so formed and reported, and the Director of Labor and Industries has demanded that plaintiff so include such men in the payroll to be reported by it and to pay premiums on the whole of such payroll so formed.

VI.

"That said rule and order so promulgated, and said demand so made as aforesaid, is in violation of and contrary to the terms of the Workmen's Compensation Act of the State of Washington, and is in violation of Article III, Section 2 of the Constitution of the United States extending the judicial power of the United States to all cases of admiralty and maritime jurisdiction, and of Article I, Section 8, of the Constitution of the United States giving Congress power to make

all laws necessary and proper to carry into execution the powers vested in the Government of the United States, and is in violation of the judicial code of the United States, and of Sections 24 and 256, giving the Federal District Courts the exclusive original cognizance of all civil causes of admiralty and maritime jurisdiction of the Constitution of the United States, and said sections of the Judicial Code of the United States, and alleges that said rule and order, and said demand cannot be enforced against this plaintiff consistent therewith.

VII.

"That if the plaintiff does not comply with said order and rule so promulgated as aforesaid, and if it does not include such boom and slip men in the payroll which it will report to the Department of Labor and Industries, and if it does not pay premiums upon the payroll so formed, the Director of Labor and Industries will invoke all of the penalties of the Workmen's Compensation Act against this plaintiff and will in so far as power is given to him, prevent this plaintiff from carrying on its business as aforesaid; that there are many other employers of labor in the State of Washington, similarly situated in all respects as is the plaintiff, against whom the same rule and the same remedies and penalties will be enforced by the Director of Labor and Industries, and a multiplicity of suits will be begun and car-

ried on thereby. That the plaintiff has no adequate remedy at law but is relievable only in a court of equity."

The question in these cases is whether the State Workmen's Compensation Act extends to and includes employees engaged in making up rafts of logs for tow on navigable water of the United States, and whether it extends to and includes workmen engaged in breaking up such rafts or booms of logs, while on the navigable water of the United States, after the booms or rafts have been anchored at a mill, and while such logs are being loaded on the conveyor for the purpose of being carried to the saw. As we understand the ruling of the Director of Labor and Industries, it is to the effect that such workmen engaged in making up such rafts or booms are included in the act until tugs attach for the purpose of towing, and that the men engaged in breaking up the rafts or booms and loading the logs to the conveyor are included in the act, despite the fact that the work of such employees is performed wholly on navigable waters of the United States.

The question, in briefer form, is whether the rights of such employees, when injured, in the course of their respective employments, are fixed by and are enforcible according to the admiralty and maritime law, or by the local compensation act.

The immediate importance of these cases is obvious when it is observed that although the plaintiffs-in-error are compelled to pay the premiums under the Workmen's Compensation Act, yet if the employment as set out in the complaint is not within the jurisdiction of the Workmen's Compensation Act, the rights of the plaintiffs-in-error shall then be governed by the admiralty and maritime law. The result is that until such time as the cases are determined by this court having the power to pronounce a determinative judgment, the plaintiffs-in-error, in order to be fully protected, find it necessary to contribute to the Accident Fund and in addition thereto to carry casualty insurance.

SPECIFICATION OF ASSIGNED ERRORS TO BE URGED

The plaintiffs-in-error urge the following assignments of error:

I.

The court erred in holding and adjudging that the rule, promulgated by the Department of Labor & Industries of the State of Washington, and Claire Bowman, as Director of Labor & Industries of the State of Washington, assuming to act pursuant to and in conformity with an act of the State of Washington, entitled:

"An Act relating to the compensation of injured workmen in our industries, and the compensation to their dependents where such injuries result in death, creating an Industrial Insurance Department, making an appropriation for its administration, providing for the creation and disbursement of funds for the compensation and care of workmen injured in hazardous employment, providing penalties for the non-observance of regulations for the prevention of such injuries and for violation of its provisions, asserting and exercising the police power in such cases, and, except in certain specified cases, abolishing the doctrine of negligence as a ground for recovery of damages against employers, and depriving the courts of jurisdiction of such controversies, and repealing Sections 6594, 6595 and 6596 of Remington & Ballinger's Annotated Codes and Statutes of Washington, relating to employees in factories, mills or workshops where machinery is used, actions for the recovery of damages and prescribing a punishment for violation thereof."

approved March 14, 1911 (commonly known as the "Workmen's Compensation Act"), requiring employers of workmen wholly engaged in making up and working upon rafts of logs, while upon the navigable waters of the United States, preparatory for tow upon the navigable waters of the United States, said rafts of logs being made up and held together by logs, commonly known as boom sticks, permanently chained together, end to end, and permanently used for so hold-

ing together and towing said rafts of logs, upon which rafts and boom sticks such workmen are compelled to walk and stand while engaged in their duties, to include in the payrolls which employers engaged in extra-hazardous industry, as defined in said Workmen's Compensation Act, are required by the terms of said act, to report to said Department and Director, and to pay assessments, levied by said Department and Director, upon such payrolls for the purpose of maintaining the Accident Fund, created by said act for the purpose of compensating workmen engaged in extra-hazardous industry, and their dependents for injuries sustained by suc hworkmen while so engaged, and requiring employers of workmen wholly engaged in breaking up and working upon rafts of logs, while upon the navigable waters of the United States, preparatory to said logs from said raft being sent to a saw mill, situated upon said navigable water of the United States, to be cut into lumber, said rafts being made up and held together by logs, commonly known as boom sticks, permanently chained together, end to end, and permanently used for so holding together and towing said rafts of logs, upon which rafts and boom sticks such workmen are compelled to walk and stand while engaged in their duties, to include in the payrolls which employers engaged in extra-hazardous industry, as defined in said Workmen's Compensation Act, are required by the terms of said act, to report to

said Department and Director, and to pay assessments, levied by said Department and Director, upon such payrolls for the purpose of maintaining the Accident Fund, created by said act for the purpose of compensating workmen engaged in extra-hazardous industry, and their dependents, for injuries sustained by such workmen while so engaged, is not in violation of Article III, Section 2, of the Constitution of the United States, extending the judicial power of the United States to all cases of admiralty and maritime jurisdiction.

II.

The court erred in holding and adjudging that said rule is not in violation of Article I, Section 8, of the Constitution of the United States, giving Congress power to make all the laws necessary and proper to carry into execution the powers vested in the Government of the United States.

III.

The court erred in holding and adjudging that said rule is not in violation of and contrary to Sections 24 and 256, of the Judicial Code of the United States, giving the Federal District Courts the exclusive original cognizance of all civil causes of admiralty and martime jurisdiction.

ARGUMENT.

The assignments of error may be discussed under one head for the reason that a decision on whether or not the local compensation act may assume control over the employment in question will answer the assignments of error.

We quote from the opinion of the Supreme Court of the State of Washington for a fair statement of the conclusions drawn from the allegations of the amended complaints:

> "From these allegations it will be seen that, while the workmen of each of the appellants work upon navigable waters, they do not actually engage in the work of navigation; that is to say, neither set of workmen transports the logs from one place on such navigable waters to another. The work of the first set is to prepare the logs for transportation; their work ends at the point where actual transportation begins. The work of the second set begins at the point where transportation ends; their work is to break up the rafts after the rafts have reached their destination, and float the logs singly or in groups to the reach of the conveyor by means of which the logs are taken from the navigable waters into appellant's mill."

This court has announced that the general rule is that any work performed by workmen upon navigable waters, no matter what may be its character, is essen-

tially maritime in its nature and controlled by the principals of admiralty, and that in contract matters admiralty jurisdiction depends upon the nature and transaction and in tort matters upon the locality.

Southern Pacific Co. v. *Jensen*, 244 U. S. 205;

Clyde Steamship Co. v. *Walker*, 244 U. S. 255;

Chelentis v. *Luckenbach Steamship Co.*, 247 U. S. 372;

Knickerbocker Ice Co. v. *Stewart*, 253 U. S. 149;

Western Fuel Co. v. *Garcia*, 257 U. S. 233;

Gonsalves v. *Morse Dry Dock Co.*, 266 U. S. 171.

The extent of the control of the state compensation act over workmen employed upon navigable water has been considered by this court in several decisions.

This court has held that an employee injured while aboard a vessel in commission on navigable waters of the United States is not included within the Workmen's Compensation Act.

Southern Pacific Co. v. *Jensen*, 244 U. S. 205;

Clyde Steamship Co. v. *Walker*, 244 U. S. 255;

Chelentis v. *Luckenbach Steamship Co.*, 247 U. S. 372;

Peters v. *Veasey*, 251 U. S. 121;

Knickerbocker Ice Co. v. *Stewart*, 253 U. S. 149;

Western Fuel Co. v .Garcia, 257 U. S. 233;

Carlisle Packing Co. v. Sandanger, 259 U. S. 255;

Washington v. Dawson & Co., 264 U. S. 219;

Robbins Dry Dock & Repair Co. v. Dahl, 266 U. S. 449;

Gonsalves v. Morse Dry Dock Co., 266 U. S. 171.

In the case of State Industrial Commission of the State of *New York v. Nordenholt Corporation*, 259 U. S. 263, this court held that where a longshoreman was injured upon a dock, an extension of the land, the injury was within the scope of the local compensation act.

In this case the deceased suffered the injuries which resulted in his death while on the dock, an extension of the land, and clearly the Workmen's Compensation Act could be made applicable thereto. We cite this case for the reason that it contains a review of the cases decided by this court involving the question here under consideration.

This court has held that an employee working aboard a ship already launched, under construction, is within the terms of a compensation act where the act provides that such employee shall be within the terms of the act unless he affirmedly elects otherwise. Such employment pertains only to local matters, the regula-

tion of which would work no material prejudice to the general maritime law.

Grant-Smith-Porter Ship Co. v. Rohde, 257 U. S. 469.

In the case of *Great Lakes Dredge & Dock Co. v. Kierejuwski*, 261 U. S. 479, this court held that where an employee, making repairs upon a scow moored in navigable waters, the employee standing upon a scaffold resting upon a float alongside, lost his life while so employed, the employment was not within the scope of the local compensation act for the reason that not only was the tort committed and effective on the navigable waters, but the rights and liabilities of the parties were matters that had direct relation to navigation and commerce.

In the latest case upon the subject, this court held that an employee working in navigable waters cutting off timbers of an abandoned set of ways, which had become an obstruction to navigation, was within the terms of the Workmen's Compensation Act for the reason that the employment was of mere local concern and its regulation by the state would work no material prejudice to any characteristic feature of the general maritime law.

Millers' Indemnity Underwriters v. Braud, 270 U. S. 59.

SUMMARY

From the foregoing decisions it may be stated that the test in the instant cases is whether or not the employment is merely local in its nature and has no direct relation to commerce or navigation and its regulation by the state will work no material prejudice to the general maritime law or whether the employment has a direct relation to navigation and commerce.

We believe a consideration of the Great Lakes Dredge & Dock Co. case, supra, and the Millers' Indemnity Underwriters case, supra, will illustrate the close question presented by the instant cases. The employment in both the Great Lakes Dredge & Dock Co. and the Millers' Underwriters case was in aid of and directly affected navigation and commerce. In our opinion, there is little distinction between the Great Lakes Dredge & Dock Co. case and the Millers' Indemnity Underwriters case, except that in the Great Lakes Dredge & Dock Co. case the employment was about a complete vessel afloat on navigable waters.

In the instant cases the employment is upon navigable waters. Suppose employees of the plaintiff in error, Sultan Railway & Timber Company, while working in making up a raft on navigable waters, should be guilty of negligence which injured a scow or ship lying on the same waters. Obviously the rights of the

parties would be fixed and determined by the maritime law. Can it therefore be said that the matter in the cases at bar is merely of local concern? We believe not.

In conclusion we desire to call the court's attention to the fact that these cases were instituted in the interest of certainty in the matter. We believe that the law in reference to the cases at bar must be applied in reference to the peculiar facts and circumstances surrounding the employment in question and that while the prior decisions of this court are instructive as to what the decision should be, yet it is necessary that this court, as the court having the power of final determination, should pass upon the peculiar employment in question.

We submit that the decrees should be reversed.

Respectfully submitted,

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JNO. J. O'BRIEN,
Attorneys for Plaintiffs in Error.

FREDERIC E. FULLER,
Of Counsel.

SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1927

SUTTER RAILWAY & TIMBER COMPANY, *Plaintiff in Error*, v. DEPARTMENT OF LABOR AND INDUSTRIES OF THE STATE OF WASHINGTON, and CLARIS BOUTHAT, as Director of Labor and Industries, *Defendants in Error.*	No. 774.
SUTTER MILL COMPANY, *Plaintiff in Error*, v. DEPARTMENT OF LABOR AND INDUSTRIES OF THE STATE OF WASHINGTON, and CLARIS BOUTHAT, as Director of Labor and Industries, *Defendants in Error.*	No. 775.

WRIT OF ERROR TO THE SUPREME COURT OF THE UNITED STATES.

BRIEF OF DEFENDANTS IN ERROR

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IN THE

SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1927

SULTAN RAILWAY & TIMBER COMPANY, *Plaintiff in Error,* v. DEPARTMENT OF LABOR AND INDUSTRIES OF THE STATE OF WASHINGTON, and CLAIRE BOWMAN, as Director of Labor and Industries, *Defendants in Error.*	No. 274.
ECLIPSE MILL COMPANY, *Plaintiff in Error,* v. DEPARTMENT OF LABOR AND INDUSTRIES OF THE STATE OF WASHINGTON, and CLAIRE BOWMAN, as Director of Labor and Industries, *Defendants in Error.*	No. 275.

WRIT OF ERROR TO THE SUPREME COURT OF THE UNITED STATES.

BRIEF OF DEFENDANTS IN ERROR

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IN THE

SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1927

SULTAN RAILWAY & TIMBER COMPANY, *Plaintiff in Error,* v. DEPARTMENT OF LABOR AND INDUSTRIES OF THE STATE OF WASHINGTON, and CLAIRE BOWMAN, as Director of Labor and Industries, *Defendants in Error.*	No. 274.
ECLIPSE MILL COMPANY, *Plaintiff in Error,* v. DEPARTMENT OF LABOR AND INDUSTRIES OF THE STATE OF WASHINGTON, and CLAIRE BOWMAN, as Director of Labor and Industries, *Defendants in Error.*	No. 275.

WRIT OF ERROR TO THE SUPREME COURT OF THE UNITED STATES.

BRIEF OF DEFENDANTS IN ERROR

STATEMENT OF THE CASE.

These actions were instituted to enjoin the department of labor and industries of the state of Washington from collecting premiums or assessments under the state workmen's compensation act.

The issues were submitted and decided in the Washington state courts solely upon demurrers to the amended complaints. The demurrer in each case is premised upon the one ground that the "complaint does not state facts sufficient to constitute a cause of action." Each complaint is fully set forth on pages 1 to 4 of the Transcript of Record in each case and the material portions of each are quoted in the brief of plaintiffs in error, pages 6 to 14.

Each plaintiff in error is a state of Washington corporation and engaged in business in that state. One is engaged in logging and the other in operating a sawmill, which businesses constitute a part of the timbering industry of that state.

The operations of the Sultan Railway & Timber Company, so far as this action is concerned, consist of dumping logs from land into the Snohomish river, a navigable stream of the United States, and there the company's men boom, sort and raft the logs.

The Eclipse Mill Company operates a sawmill on, or immediately adjacent to, the said river, and so far as material to this action the company's men, after rafts of logs are delivered to them in the water near the mill, go upon and about these rafts while they are in the river and tear them down or break them apart and then guide the logs separately to a nearby mill conveyer which extends into the water from the mill.

In the one case rafts of logs are built and in the other they are torn down or broken up. In neither

case are any of the men engaged in any way in the actual transportation of the logs or rafts. In the one case the men simply prepare the logs for transportation and in the other they separate them from one another after they have reached their destination. In considering these two cases, therefore, it should be borne in mind that we are not concerned with logs or rafts of logs which are being transported over navigable waters of the United States and that we are only concerned with the handling of the logs either (1) before they are started on their journey or become an instrumentality of commerce; or (2) after they have arrived at their destination and cease to be an instrumentality of commerce.

ARGUMENT.

Counsel say in their brief (p. 19) that "the assignments of error may be discussed under one head for the reason that a decision on whether or not the local compensation act may assume control over the employment in question will answer the assignments of error."

No citations are necessary to support the principle of law that a state may legislate as to conditions or operations within the state if such legislation is not violative of any Federal Constitutional prohibition.

Section 2, chapter 74, of the Session Laws of the State of Washington for 1911, being section 7674, Remington's Compiled Statutes of Washington, 1922, the same being a part of the original workmen's compensation act, provides in part as follows:

"There is a hazard in all employment, but certain employments have come to be, and to be recognized as being, inherently constantly dangerous. This act is intended to apply to all such inherently hazardous work and occupations, *and it is the purpose to embrace all of them which are within the legislative jurisdiction of the state,* * * *"

And then the act specifically includes logging, the operation of sawmills, and booming and driving logs.

Counsel argues, however, that by the state assuming jurisdiction over the operations mentioned for the purpose of administering our workmen's compensation act we are entering admiralty jurisdiction

which is exclusively for the Federal Government. The question, then, in these two cases is whether the men engaged in building and tearing down these rafts upon navigable waters of the United States are exclusively within admiralty jurisdiction or are subject to the state workmen's compensation act.

It may be said that there has been considerable litigation since the workmen's compensation acts were enacted to determine the line of demarcation between the admiralty jurisdiction and the jurisdiction of the states in the administration of the several compensation acts. One rule, however, has been clearly established, and that is that, where the employment falls so exclusively within admiralty jurisdiction as to prevent local state legislation from becoming of controlling effect with reference to the operations or rights of employers and employees and the families or dependents of the latter, the workmen's compensation act cannot apply.

Great Lakes Dredge and Dock Co. v. Kierejewski, 261 U. S. 479, 67 L. ed. 756;
Washington v. W. C. Dawson & Co., 264 U. S. 219, 68 L. ed. 646;
Gonsalves v. Morse Dry Dock and Repair Co., 266 U. S. 171, 69 L. ed. 228;
Robins Dry Dock and Repair Co. v. Dahl, 266 U. S. 449, 69 L. ed. 372.

The difficulty in the application of this rule is in determining when an employment is so exclusively within admiralty jurisdiction that local state legislation will work to the prejudice of the general har-

mony of the admiralty laws. While location (that is, upon navigable waters of the United States) and nature of employment (that is, maritime) are elements in determining whether or not admiralty has jurisdiction, still there is a third element about which we are primarily concerned in this case, namely: the relationship of the operations to navigation and commerce, for, from the authorities which we will cite, unless such operations form a part of navigation and commerce, the workmen's compensation acts are applicable.

In the case of *Grant Smith-Porter Ship Co. v. Rohde*, 257 U. S. 469, 66 L. ed. 321, this court held that work on an uncompleted vessel, after the vessel had been launched and was in navigable waters, was subject to the workmen's compensation act of Oregon, and in that case the court said:

"Here the parties contracted with reference to the state statute; their rights and liabilities had no direct relation to navigation, and the application of the local law cannot materially affect any rules of the sea whose uniformity is essential. Applying the rule announced in the last above mentioned case to the cases at bar, it may well be argued that our workmen's compensation act applies with greater force because, by statute, its applicability is not a matter of election or contract, but is compulsory, and, too, in the instant cases the rights and liabilities and the operations had absolutely no direct relation to commerce or navigation."

In the case of *Miller's Indemnity Underwriters v. Braud*, 270 U. S. 59, 70 L. ed. 470, this court, in explaining the *Rohde* case, *supra*, said:

"We said the cause was controlled by the principle that, as to certain local matters regulation of which would work no material prejudice to the general martime law, the rules of the latter may be modified or supplemented by state statutes. And we held that, under the circumstances disclosed, 'regulation of the rights, operations and consequent liabilities of the parties, as between themselves, by a local rule would not necessarily work material prejudice to any characteristic feature of the general maritime law, or interfere with the proper harmony or uniformity of that law in its international or interstate regulations'."

In the *Braud* case, *supra,* this court, in determining that a man who was employed as a diver from a floating barge anchored in a navigable body of water thirty-five feet from shore, for the purpose of sawing off timbers of an abandoned set of ways once used for launching ships which had become an obstruction to navigation, was killed by suffocation while diving to perform this work, said:

"In the cause now under consideration the record discloses facts sufficient to show a maritime tort to which the general admiralty jurisdiction would extend save for the provisions of the state compensation act; but the matter is of *mere local concern* and its regulation by the state will work no material prejudice to the characteristic feature of the general maritime law. The act prescribes the only remedy; its exclusive features abrogate the right to resort to the admiralty court which would otherwise exist."

Clearly the cases at bar are more nearly within the rule announced in the *Rohde* and *Braud* cases, *supra,* than are those cases themselves, because in the

cases at bar we have domestic corporations whose operations are incidental and a part of the major industry of the state of Washington, namely: lumber. Their operations form no part of commerce or navigation. The submission of these companies to the state compensation act cannot in any way be said to interfere with the uniform or general application of admiralty rules. The cases cited by counsel are not inconsistent with the cases cited by us. In fact, they seem to be in entire accord. It is true that in the cases cited by counsel the court generally held that the workmen's compensation act did not apply, as was true in the *Dawson* case, *supra*, but that was for the reason that the employees were engaged upon instrumentalities of commerce, namely: ships.

As stated by our supreme court in the opinion rendered in these cases at bar (Tr. p. 6):

"Manifestly, it seems to us that the work in which the workmen are engaged is purely local in its nature, that it has no direct relation to commerce or navigation, and that its regulation by the state will work no material prejudice to any characteristic feature of the general maritime law, nor interfere with the harmony or uniformity of that law with its international or interstate relations."

And it may also be said that the imposing of the premiums or assessments prescribed in the act upon these employers does not in any way constitute a burden upon commerce or navigation or upon those carrying on operations which are in admiralty. It

is simply a charge against those who are engaged in a purely local industry.

In counsel's summary (p. 23) he submits the argument that, if the employees of the plaintiffs in error, while working in making up a raft of logs, should be guilty of negligence which injured a scow or ship, the rights of the party would be fixed and determined by the maritime law. We feel it unnecessary to discuss the rights and liabilities in such a case, nor do we believe that such an argument has any application to the rights and liabilities with respect to the workmen's compensation act, because this court has said, as we pointed out, that even though admiralty had jurisdiction such jurisdiction would be supplanted by a workmen's compensation act, if and when the application of the workmen's compensation act would work no material prejudice to any of the characteristic features of the general maritime law or interfere with the harmony or uniformity of that law in its international or interstate relations.

Since these cases were first submitted to the state courts for consideration there has become operative a Federal act known as the longshoremen's and harbor workers' compensation act. This act, however, could not in our judgment supplant the state workmen's compensation act, but even if it could, it has not done so, for, under section 903, chapter 18, title 33, which is a part of the longshoremen's and

harbor workers' compensation act passed March 14, 1927, (c. 509, 44 Stat.) it provides in part as follows:

"Compensation shall be payable under this act in respect of disability or death of an employee, but only if the disability or death results from an injury occurring upon navigable waters of the United States (including any drydock) and if recovery for the disability or death through workmen's compensation proceedings *may not validly be provided by state law.*"

SUMMARY.

In conclusion, we submit:

1. That admiralty has no jurisdiction over the operations of these plaintiffs in error;

2. That, if admiralty has jurisdiction, the workmen's compensation act is applicable to these operations for the reason that its application would work no material prejudice to any of the characteristic features of the general maritime law or interfere with the proper harmony or uniformity of that law in its international or interstate relations; and

3. That the longshoremen's and harbor workers' compensation act is not applicable to these operations.

Respectfully submitted,

JOHN H. DUNBAR,
Attorney General,

MARK H. WIGHT,
Assistant Attorney General,

Attorneys for Defendants in Error.

SUPREME COURT OF THE UNITED STATES.

Nos. 274 and 275.—October Term, 1927.

274	Sultan Railway & Timber Company, Plaintiff in Error, *vs.* Department of Labor and Industries of the State of Washington, et al.	In Error to The Supreme Court of the State of Washington.
275	Eclipse Mill Company, Plaintiff in Error, *vs.* Same.	

[May 14, 1928.]

Mr. Justice Van Devanter delivered the opinion of the Court.

These suits present the same questions, were heard together and may be disposed of in one opinion, as they were below.

They were brought to restrain the enforcement of an order, legislative in character, made by a state bureau—the objection to the order being that it is repugnant to the Constitution and laws of the United States in that it impinges on the admiralty and maritime jurisdiction of the United States. The order was upheld by the trial court and by the Supreme Court of the State, 141 Washington 172. The cases are here on writs of error sued out under § 237(a) of the Judicial Code.

The order is a statute of the State within the meaning of that section, and therefore our jurisdiction is invoked in the right mode. *John P. King Manufacturing Co.* v. *Augusta*, just decided, and cases there cited.

The order requires each of the plaintiffs from time to time to report the number of men employed by it in the work about to be described; together with the wages paid to them, and to pay into the State's workmen's compensation fund, out of which injured employees are compensated, premiums or assessments based on such wages.

The plaintiff in one suit is conducting logging operations, a part of which consists in putting sawlogs into booms, after they have

been thrown into a navigable river, so that they conveniently may be towed elsewhere for sale. The men are employed in the booming work. The plaintiff in the other suit conducts a saw mill on the bank of a navigable river. Logs are towed in booms to a point adjacent to the mill and then anchored. The booms afterwards are taken apart and the logs are guided to a conveyor extending into the river and then drawn into the mill for sawing. The men are employed in taking apart the booms and guiding the logs to the conveyor. In both instances the place of work is on navigable water—in one it is done before actual transportation begins and in the other after the transportation is completed.

It is settled by our decisions that where the employment, although maritime in character, pertains to local matters, having only an incidental relation to navigation and commerce, the rights, obligations and liabilities of the parties, as between themselves, may be regulated by local rules which do not work material prejudice to the characteristic features of the general maritime law or interfere with its uniformity. *Grant Smith Porter Co. v. Rohde*, 257 U. S. 469; *Millers' Indemnity Underwriters v. Braud*, 270 U. S. 59; *Alaska Packers Association v. Industrial Accident Commission*, (April 9, 1928).

We think the order in question as applied to the situations disclosed comes within that rule.

Judgments affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.

Mr. Justice BRANDEIS.

For reasons stated in *John P. King Manufacturing Co. v. City Council of Augusta*, decided this day, Mr. Justice HOLMES and I think that the writs of error in these cases also should be dismissed. Treating these writs of error as petitions for certiorari (*see Gaines v. Washington*, decided this day), we think that the petitions should

be denied. The trivial character of the questions presented illustrates again the wisdom of not granting, in cases involving the orders of administrative boards, a review as of right—with its attendant right to oral argument. It is true that each of these cases presents a question involving the Federal Constitution. But in both the controlling principle is well settled, and the question presented is simply whether on the particular facts it is applicable. Obviously such a question is of no general importance. The number of administrative boards, state and municipal, with like power to issue orders is now very large. Each board issues many orders. And each order may, by its application to varying facts, give rise to many distinct constitutional questions. *Dahnke-Walker Milling Co. v. Bondurant*, 257 U. S. 282.